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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,163	03/09/2007	Gunter Gomoll	2003P01974WOUS	4748

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BSH HOME APPLIANCES CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
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EXAMINER

AYRES, TIMOTHY MICHAEL

ART UNIT	PAPER NUMBER
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3637

NOTIFICATION DATE	DELIVERY MODE
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10/26/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

NBN-IntelProp@bshg.com

Office Action Summary	Application No. 10/584,163	Applicant(s) GOMOLL ET AL.	
	Examiner TIMOTHY M. AYRES	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-16, 21-28 and 31-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-16, 21-28, and 31-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/02/10 has been entered.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 24 and 25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no discussion in the disclosure of the decorative panel being removable nor is there any structure specifically shown or disclosed that would allow the decorative panel to be removed.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 14 is rejected under 35 U.S.C. 102(b) as being anticipated by applicant admitted prior art figure 1. As seen in figure 1 of this application a body (6) and door (7) of a refrigerator are installed in a niche (1). As seen in the figure when the door (7) is open it projects beyond a front edge (3) of the niche.

5. Claims 14 is rejected under 35 U.S.C. 102(b) as being anticipated by Finding the right refrigerator by Roe Osborn from fine homebuilding magazine. Osborn teaches different embodiments of refrigerators in stalled in a niche. As seen in the refrigerator on page 99, the body of the refrigerator is flush with the niche and the door projects beyond the edge. As also seen in the picture on page 99, the door of the refrigerator has a receiving area that extends inside the body of the refrigerator and into a cavity on the door. Regarding claims 15, Osborn teaches a body flush with the niche, but since the niche is not positively claimed it is also considered capable of being mounted deeper in a niche such as seen on page 100 and 101.

6. Claims 14 is rejected under 35 U.S.C. 102(b) as being anticipated by Hide That Ugly Refrigerator by Rex Alexander from fine homebuilding magazine. Alexander

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teaches a refrigerator as best seen on page 72. The refrigerators are described as standard refrigerators which inherently would have a thickness to the door with recess to make a compartment. Therefore based on the figure the body would be behind an edge of the niche (though capable of being flush) and the door slightly projects in front of the edge of the niche.

7. Claims 14 is rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 6,079,216 to de Marsillac Plunkett. De Marsillac teaches a refrigerator unit installed in a niche as seen in figure 1, 2, and 4. The refrigerator comprises a body (1) and thermally insulated door (4,5). The niche (21) is the recess in the wall (20), it should also be noted that the niche is not considered to be positively claimed and is considered just a reference point to define structure of the refrigerator. Regarding claim 15, Also with no structure of niche there is no reference point to define a front of the niche or refrigerator.

8. Claims 14 is rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 4,790,146 to Mun. Mun teaches a refrigerator capable of being installed in a niche. The refrigerator comprises a body and thermally insulated door. While no niche is specified in most kitchens the refrigerator is deigned to fit in a niche, even if there is room between the body and the niche, but this is irrelevant since the claims do not positively require the niche and the refrigerator of Mun is very capable of being positioned in the positions required by the claim without any modification to the refrigerator.

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9. Claims 14 is rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 5,358,326 to Cherry. Cherry teaches a refrigerator in stalled in a niche. The refrigerator comprises a body and thermally insulated door. The examiner is interpreting the front of the refrigerator to mean the front of the body (Col. 1, lines 15-20) since it known in the art (as reinforced by page 101 in the finding the right refrigerator article) that the doors and handles of counter depth refrigerator stick out beyond the cabinet front since the body of a counter depth refrigerator is designed to be 24 in and cabinets are also designed to be 24 inches with minor variations in design and manufacturing. Regarding claims 15 and 16, Cherry to teach a body flush with the niche, but since the niche is not positively claimed it is also considered capable of being mounted deeper in a niche.

10. Claims 14, 23, 26-28, and 31-36 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 2,728,203 to King. King teaches a refrigerator capable of being installed in a furniture niche. The refrigerator has a door (10) that once open would project beyond a front edge of the furniture niche. Shelves (36) include a receiving area that does not extend into the inside area of the body of the refrigerator as seen in figure 1. The door includes an outer cladding (14) that is considered the decorative panel. Insulation (16) separates the inner cladding (15) from the outer cladding (14).

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 15, 16, 21, 22, 37-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 2,728,203 to King in view of "Hide That Ugly Refrigerator" by Rex Alexander from fine homebuilding magazine. King discloses every element as claimed and discussed above except the refrigerator installed in a niche and the relationship of the refrigerator to niche. Alexander teaches a refrigerator as best seen on page 72. The refrigerators are described as standard refrigerators which inherently would have a thickness to the door with recess to make a compartment. Therefore based on the figure the body would be behind an edge of the niche (though capable of being flush) and the door slightly projects in front of the edge of the niche. At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the refrigerator of King by putting it in a niche as taught by Alexander to help give the kitchen a build in look while not using a built-in refrigerator.

13.

14. Claims 14-16, 21-28, and 31-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Faux Fridge Front" by Mike Guertin from fine homebuilding magazine in view of US Patent 2,728,203 to King. Guertin teaches a refrigerator

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installed in a furniture niche as seen in figure on page 53. The refrigerator body is behind the front edge of the niche and the decorative panel of the door projects beyond the front edge when the door is closed as seen in the left figure on page 52. Guertin does not expressly disclose a receiving area in the door that does not project into an interior of body of the refrigerator. King teaches a refrigerator capable of being installed in a furniture niche. The refrigerator has a door (10) that once open would project beyond a front edge of the furniture niche. Shelves (36) include a receiving area that does not extend into the inside area of the body of the refrigerator as seen in figure 1. The door includes an outer cladding (14) that are considered the decorative panel. Insulation (16) separates the inner cladding (15) from the outer cladding (14). At the time of the invention it would have been obvious to use the refrigerator of King (simple substitution) as the base refrigerator and then add the decorative panel onto that in the location as taught by Guertin.

Response to Arguments

15. Applicant's arguments filed 8/02/10 have been fully considered but they are not persuasive. As previously stated, the examiner considers claims 14 and 27 as to not positively recite the niche and therefore the claims are directed just to a refrigerator with the niche referred to in an intended use fashion. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the

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claim. Furthermore even if positively claimed as seen in claim 37, there is no special definition in specification for "projecting beyond a front edge of the furniture niche" therefore there is nothing in the claims that require that the door needs to be closed when it projects beyond a front edge nor does there need to be cupboard element as part of the furniture niche (except when specifically stated). Therefore the previous rejections on claim 14 are considered valid. While claim 37 does claim the need to project beyond the front edge when the door is closed, but does not claim a cupboard element.

16. In regards to the arguments towards the 103 rejections. The applicant argues that there is no motivation to use the refrigerator of King since the niche of Alexander is big enough, while this has nothing to do the rejection since the rejection is a simple substitution the examiner would argue that there can never be too much refrigerator space in modern kitchens. The 103 rejection is a simple substitution of the refrigerator of King fitting into the niche of Alexander. While it suggested that the niche of Alexander is designed deep enough for the refrigerator door to end up flush with the end of the edge of niche, it is clear from the description that is known and capable of being pulled out farther or even the niche built to be smaller such that the door extends slightly out further as it appears to be in the photo. Also, one of ordinary skill in the art would easily understand that a refrigerator can be adjusted within a niche to create proper aesthetics depending on the kitchen layout since there is no structural relationship between the niche and refrigerator that limits its location. In addition it would also be obvious for one of ordinary skill in the art to try since there are a finite number of configurations (six

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total, body behind edge with each of the three different door positions, body flush with edge, body forward beyond edge, and door behind edge). Guertin states that the refrigerator sticking out into the room is a drawback, but does not teach away from this or present any structure that would not function with the refrigerator sticking out in the room. While such a configuration may not have the most desired aesthetics, it has nothing to do with obviousness. Again like with King and Alexander, the combination with King is not a true combination of parts of the refrigerators, but a combination of niche and decorative panel modification of Guertin with the whole refrigerator of King. In Guertin as seen in the right photo on page 52 a relationship between the toe vents and the body of the refrigerator is established. This relationship can then be extrapolated to the photo on the left on page 52 which clearly has the toe vents behind the front edge of the niche. Further by looking at the black edge of the aluminum channel it is clear that the body is at least flush or behind the front edge of the niche.

17. The applicant states that the objects of the invention are achieved by having a receiving area in the door that is outside the body, hence making the refrigerator deeper/bigger while keeping the depth of the case/body the same. The examiner contends that this feature alone is taught by King and that everything else dealing with the niche is design choice about the refrigerator relative to the front edge of the niche. The examiner contends that the relationship of the refrigerator and the niche is a) taught by the references above; b) one of ordinary skill in the art would understand the adjustability and would try the different configuration until one that aesthetically pleasing to them is used.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TIMOTHY M. AYRES whose telephone number is (571)272-8299. The examiner can normally be reached on MON-THU 8:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Darnell Jayne can be reached on (571) 272-7723. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/T. M. A./
Examiner, Art Unit 3637
9/27/2010

/Darnell M Jayne/
Supervisory Patent Examiner, Art
Unit 3637